IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 4089 of 2005

Between:

Andhra Bank Zonal Office, Koti, Hyderabad,

rep. by its Chief Manager, Sri K.S. Murthy
S/o Pattabhi Ramaiah, aged 54 years.

..... PETITIONER

AND

1 The State of Andhra Pradesh,

rep. by its Principal Secretary, Municipal Administration &
Urban Development Department, Secretariat,

Saifabad, Hyderabad.
2 Municipal Corporation of Hyderabad,

rep. by its Commissioner, Advertisement Section,
Hyderabad.
3 Additional Commissioner (Advertisement),

Municipal Corporation of Hyderabad,

Tank Bund, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly, one in the nature of Writ of Mandamus as under: a) Declare the action of the respondents in demanding the advertisement fee as payable for the advertisements put up at its banks premises which is already been assessed property tax as illegal and; b) consequently direct the respondents to refrain from collecting any fee or seeking to demolish or remove the advertisement boards put up at its premises by the writ petitioner bank and further direct the respondents to refund whatever advertisement fee levied, demanded and collected so far together with interest @ 6% per annum pass such order or further orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.NUTY RAM MOHAN RAO

Counsel for the Respondents No.: GP FOR MUNCIPAL ADMN. & URBAN DEV.

The Court at the stage of admission made the following :

O R D E R (Per TCSR,J)

Petitioner seeks a writ of Mandamus for declaring the action of the respondents in demanding the advertisement fee payable for the advertisements put up on its bank's premises, which premises has already been assessed to property tax, as illegal and further consequential direction to restrain the respondents from collecting the fee or demolishing or removing the advertisement boards.

2. Petitioner is a Government of India undertaking constituted under the Banking Companies (Acquisition and Transfer of undertaking) Act, 1980. It is the owner of the building bearing No.4-5-1 to 23 situate at Koti, Hyderabad, whereat, it carries on commercial and banking activities. The 2nd respondent – Corporation assessed the said property and levied property tax on the building, on commercial basis. Petitioner has been paying the said property tax. On its

Sultanbazar branch, zonal office and credit card divisions and other departments are operating and functioning from the said building. For the purpose of convenience of public, more so, to customers and borrowers of the petitioner – bank, so as to enable them to identify its premises, petitioner displayed a name board on the bank, mentioning the respective branch/office/department of the bank on the bank premises, situate at Koti, Hyderabad. 2nd respondent issued a notice dated 30.6.2003 demanding the petitioner to pay Rs.1,20,000/- towards the advertisement fee for the period 2000 to 2004 for the glow sign boards displayed on the bank premises. Petitioner addressed a letter to the 1st respondent seeking exemption and submitted its objections dated 22.2.2005 for the said demand notice. The decision of the 1st respondent is awaited.

3. It is the case of the petitioner that the signboard cannot be called as an advertisement, more so, illuminated advertisement, since the purpose of erecting the sign board is to give information to the public. As aforesaid, questioning the said action of the respondents, writ petition has been filed.

4. We have heard the learned counsel for the petitioner and the Standing Counsel for the Municipal Corporation.

5. There has been no gainsaying that the glow signboard has been erected by the petitioner – bank on its own premises, whereat it has been carrying on banking activities. It is also an admitted fact that it is only a signboard containing the name of the bank, so as to enable the customers of the bank to know its premises. While it is the contention of the petitioner that it is not at all an advertisement, much less an illuminated advertisement; it is the case of the respondents that it is self-illuminated signboard and attracts the expression 'advertisement' and is therefore, accessible for advertisement tax.

6. Sri N.Ram Mohan Rao learned counsel for the petitioner seeks to place reliance on the provision of Hyderabad Municipal Corporations Act, 1955, germane in the context for consideration, which reads as

under:

"421. Regulation and control of advertisements:

1. No person shall without the written permission of the Commissioner, erect, exhibit, fix or retain any advertisement whether now existing or not, upon any land, building, wall, hoarding or structure:

Provided always that such permission shall not be necessary in respect of any advertisement which is not an illuminated advertisement nor a sky-sign and which…

a. is exhibited within the window of any building;

b. relates to the trade or business carried on within the land or building upon which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein, or to any sale, entertainment or meeting to be held upon or in the same, or to the trade or business carried on by the owner of any vehicle upon which such advertisement is exhibited;

c. relates to the business of any railway administration;

d. is exhibited within any railway station or upon any wall or other property of a railway administration except any portion of the surface of such wall or property fronting any street.

2. Where any advertisement shall be erected, exhibited, fixed or retained after three months from the enactment of this section upon any land, building, wall, hoarding or structure save and except as permitted or exempted from permission as hereinbefore provided, the owner or person in occupation of such land, building, wall, hoarding or structure shall be deemed to be the person who has erected, exhibited, fixed or retained such advertisement in contravention of the provisions of this section unless he proves that such contravention was committed by a person not in his employment or under his control or was committed without his connivance."

3. ……

(4) … ……

7. A perusal of the said provision makes it clear that no person without written permission of the Commissioner, shall erect, exhibit, fix or retain any advertisement, upon any land, building, wall, hoarding or structure. Such written permission is not necessary, in respect of any advertisement, which is not an illuminated advertisement, nor a sky sign, which relates to the trade or business carried on within the land or building upon which such advertisement is exhibited.

8 . Therefore, the contention of the learned counsel for the petitioner is that this glow signboard erected by the petitioner will not attract the provisions of Section 421 squarely. The learned Standing Counsel on the other hand contends that since it is self-illuminated glow signboard, it attracts the provisions squarely.

9 . In view of the competing claims, it shall have to be considered whether the glow signboard erected by the petitioner on its own premises is 'advertisement' or not. It is a mixed question of law and fact, which shall have to be decided considering the facts and circumstances, along with the provisions germane for consideration in the context. Inasmuch as the petitioner has submitted a representation to the respondents, which according to its own case, is pending consideration, we are not inclined to adjudicate the contentious issue as to whether the glow sign board erected by the petitioner attracts the provisions of Section 421 of the Hyderabad Municipal Corporation Act and is 'advertisement', consequently exigible to advertisement tax. Instead it is appropriate to dispose of the writ petition directing the petitioner to approach the authorities inviting an order on the representation made by it and directing the authorities to dispose of the same having regard to the significance attached to such decision, which has wide range ramifications through out the metropolis, as expeditiously as possible. It is also appropriate to direct the respondents, in our considered view, not to take any coercive steps for the collection of advertisement tax as

proposed, nor to demolish signboard erected, pending consideration of its decision. In the meanwhile, we feel it appropriate to pass such orders as discussed hereinabove, having regard to the significance attached to the question involved and its wide range consequences in and around the metropolis, to avoid any future litigation.

10. For the above reasons, the instant writ petition shall have to be disposed of with the direction as under:

"Petitioner is directed to approach the authorities pursuing the representation dated 22.2.2005 given, in the event of which the 2nd respondent shall consider the same as expeditiously as possible and pass appropriate orders thereof and in the meanwhile we direct the respondents 2 and 3 not to take any coercive steps for the collection of the advertisement tax or for the demolition of the sign boards in question, pending consideration of the objections filed before it."

11. We direct both the parties to bear their respective costs.

M.H.S.ANSARI,J

T.CH.SURYA RAO,J

AVS/RNS

DATE:10.03.2005

To

1 The Principal Secretary,

State of Andhra Pradesh,

Municipal Administration &
Urban Development Department, Secretariat,

Saifabad, Hyderabad.

2 The Commissioner,

Municipal Corporation of Hyderabad,

Advertisement Section,
Hyderabad.

3 Additional Commissioner (Advertisement),

Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad.

4 Two CCs to G.P.for Municipal Administration and

Urban Development,

High Court of A.P., Hyderabad(OUT)

5 Two CD copies